

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TIMOTHY RYAN,

Plaintiff,

vs.

CIVIL ACTION NO. 5:09CV55

MICHAEL J. ASTRUE,  
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION/OPINION

On May 22, 2009, in conjunction with filing a Complaint against the Commissioner of Social Security, Plaintiff filed an Application to Proceed without Prepayment of Fees and Costs [Docket Entry 3]. The Court, by order dated May 27, 2009, and after review of said application, denied Plaintiff's request to proceed *in forma pauperis*, reasoning that Plaintiff had failed to use the proper form for IFP application to proceed without prepayment of the costs in a Social Security case. [Docket Entry 7]. In this Court's May 27, 2009, Order, the Court ordered Plaintiff to complete and file the IFP form provided him by the clerk within twenty days from the date of entry of the order.

Plaintiff has not, as of this date completed and filed the IFP form provided him by the clerk nor has he paid his fees and costs, in the amount of \$350.00 to the District Clerk to institute this civil action.

28 U.S.C. §1914(a) reads as follows:

The Clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350 . . . .

L.R. Gen. P. 3.01 provides the following:

The Court may authorize the commencement, prosecution or defense of any civil or criminal action or proceeding, or any appeal . . . , without prepayment of fees and costs or security, by a person who makes an affidavit that he or she is unable to pay

costs or give security as provided in 28 U.S.C. §1915.

Plaintiff's affidavit was denied by this Court; he is required to pay the filing fee and has done neither.

### **RECOMMENDATION**

For the above reasons, the undersigned respectfully **RECOMMENDS** that Plaintiff's Complaint (Docket Entry 1) be **DISMISSED** without prejudice for failure file the proper IFP form provided him by the clerk or, in the alternative, to pay the filing fee as required by 28 U.S.C. §1914(a).

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Judge Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

The Clerk of the Court is directed to send a copy of this Report and Recommendation to Plaintiff at his last shown address of P.O. Box 30, Ridgeley, West Virginia 26753 and to provide a copy of the same to all counsel of record.

DATED: June 18, 2009

*John S. Kaull*

JOHN S. KAULL  
UNITED STATES MAGISTRATE JUDGE